

JK

321

G8

LIBRARY OF CONGRESS.

Chap. JK 321

Shelf C. 8

UNITED STATES OF AMERICA.



*Hon. J. C. G. Kennedy
with the respects of the Author (formerly
Comd'g at Ft. Albany)*

THE

SOVEREIGNTY OF THE PEOPLE.

BY

WILLIAM B. GREENE.

*formerly Col. Mass. 14th and in charge
of the works from the Arlington House
to Alexandria.*

"The people alone have an incontestable, inalienable, and indefeasible right to institute government, and to reform, alter, or totally change, the same, when their protection, safety, prosperity, and happiness require it."

CONSTITUTION OF MASSACHUSETTS.

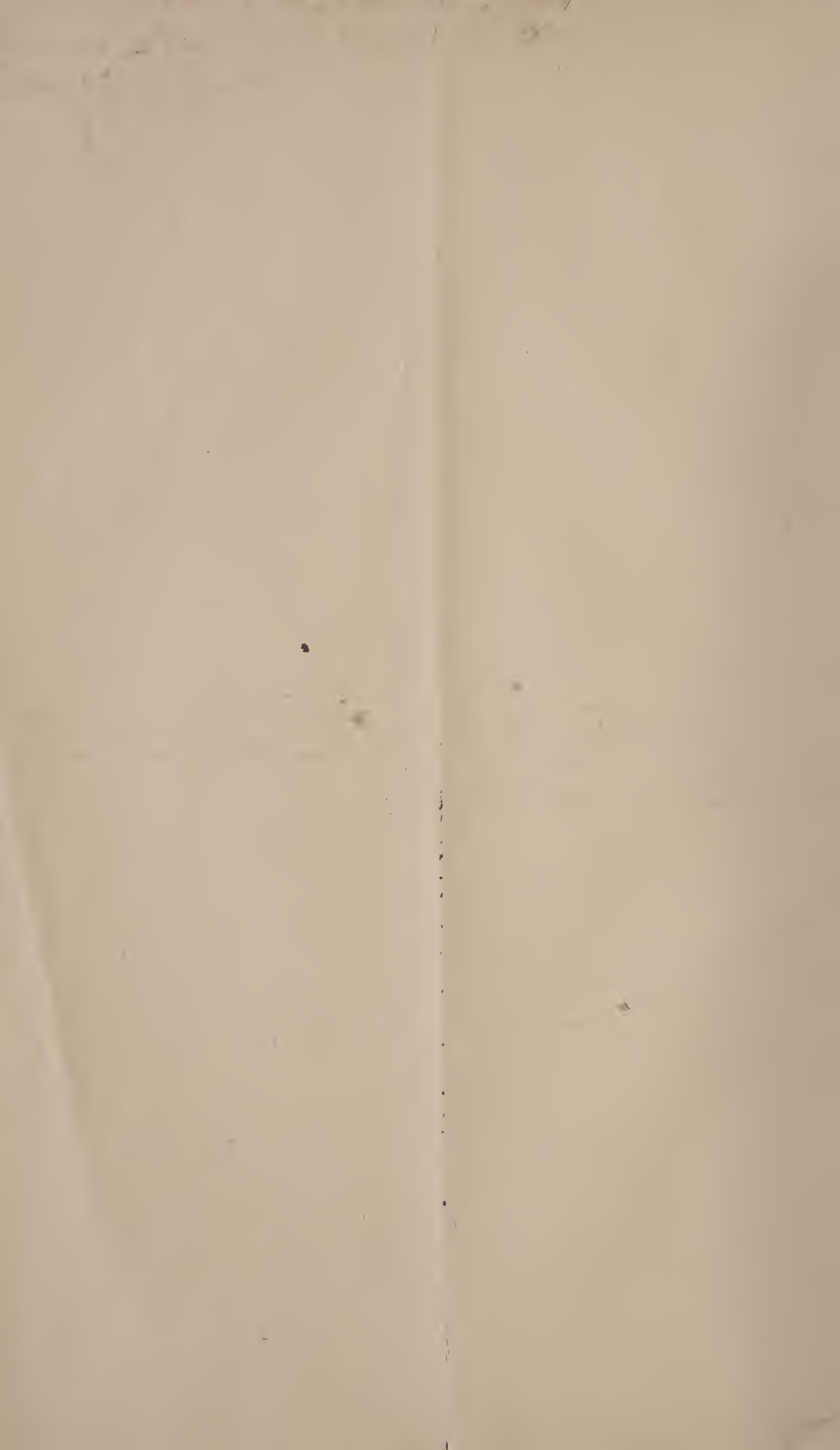
BOSTON :

A. WILLIAMS AND CO., PUBLISHERS,

100 WASHINGTON STREET.

1868.

exp.



THE
SOVEREIGNTY OF THE PEOPLE.

BY

WILLIAM B. GREENE.

"The people alone have an incontestable, inalienable, and indefeasible right to institute government, and to reform, alter, or totally change, the same, when their protection, safety, prosperity, and happiness require it."

CONSTITUTION OF MASSACHUSETTS.



BOSTON:
A. WILLIAMS AND CO., PUBLISHERS,
100 WASHINGTON STREET.

1868.

JK 321

G 8

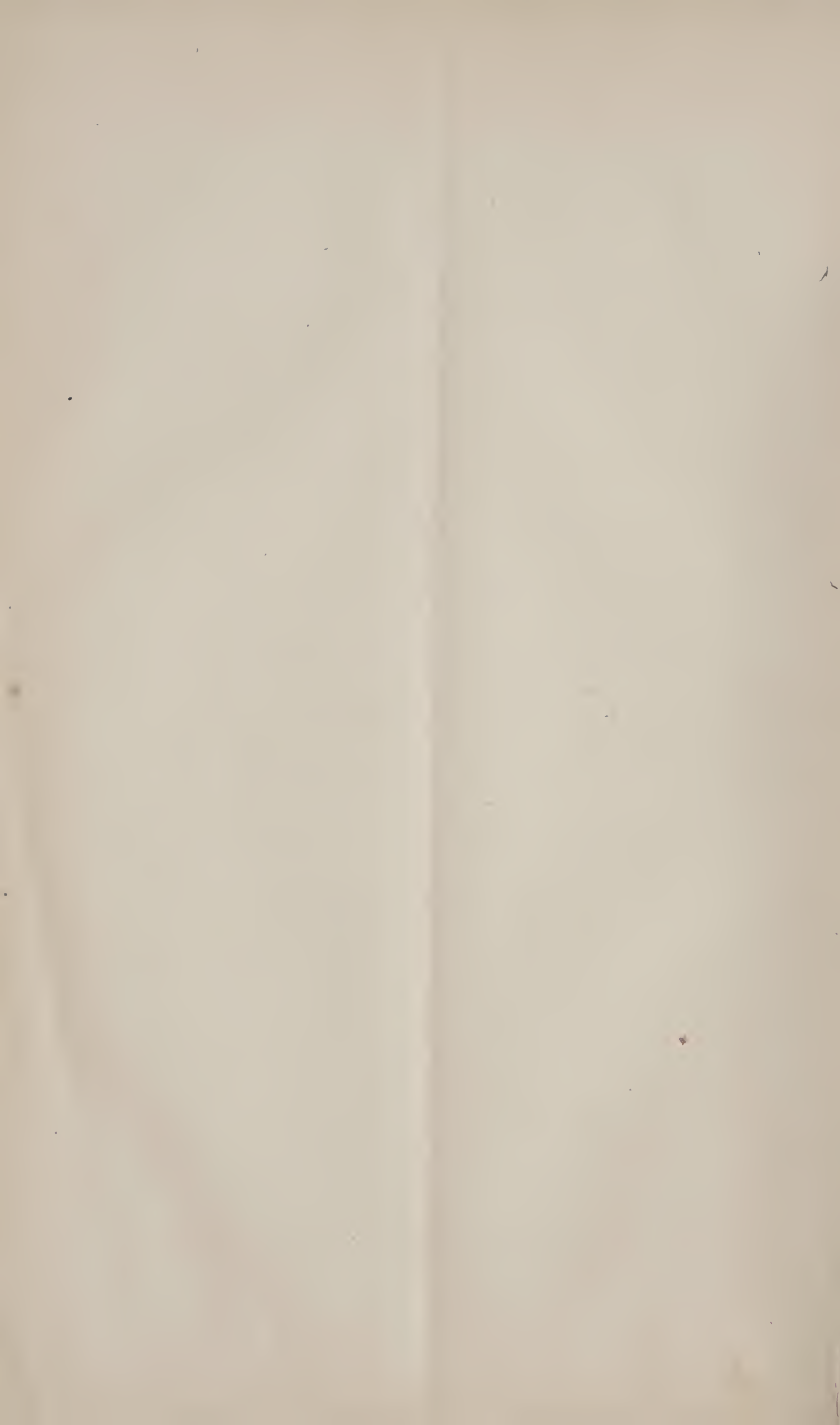
To
THE ILLUSTRIOUS
MAJOR-GENERAL GEORGE B. McCLELLAN

THESE PAGES ARE RESPECTFULLY INSCRIBED

BY ONE OF THE MOST FAITHFUL

ALTHOUGH ONE OF THE LEAST MERITORIOUS

OF HIS FORMER SUBORDINATES.



THE SOVEREIGNTY OF THE PEOPLE.

THE word "authority" occurs in the Constitution of the United States five times: the word "sovereignty" occurs in it not once.

The Constitution of Massachusetts says expressly, "The people inhabiting the territory formerly called the Province of Massachusetts Bay do hereby solemnly and mutually agree with each other to form themselves into a *free*, SOVEREIGN, and *independent* body-politic, or State, by the name of the Commonwealth of Massachusetts." And again: "The people of this Commonwealth have the sole and exclusive right of governing themselves, as a *free*, SOVEREIGN, and *independent* State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not be hereafter, by them expressly delegated to the United States of America in Congress assembled." Nevertheless, and as if to make manifest a want of foresight in the framers of her Constitution, the people of Massachusetts have, in the exercise of their original sovereignty, expressly delegated "powers, jurisdictions, and rights," not only to "the United States in Congress assembled," but also to the United States as represented by the executive and judiciary departments of the existing Federal Government, — to say nothing of the Federal-Constitution-amending power, which is given, substantially, not to the Federal Government at all, but to three-fourths of the several States in their separate sovereign capacities.

Sovereignty is *possessed* by the United States; and it is possessed also by the Commonwealth of Massachusetts. The Commonwealth may, for instance, in the exercise of its sovereign power, try, convict, and hang persons who commit murder within its territorial limits; no throne, dominion, principal-

ity, or power, other than the State itself, having any thing to do or to say in the matter. And again, in like manner, the United States may, in the exercise of their sovereignty, and independently of the will of all opposing human authorities whatsoever, try, convict, and hang pirates.

Sovereignty, as it exists in God, is simple and indivisible ; but, as it exists among men, it is multiple, and separable into parts. Human sovereignty is defined by its object, and by the sphere of its activity. It by no means follows, therefore, because Massachusetts has parted with the treaty-making power, because she cannot send ambassadors to foreign courts or try pirates captured on the high seas, that she has parted with her sovereignty. There are many sovereign powers other than that of hanging murderers, which the Commonwealth of Massachusetts has never yet surrendered.

The Sultan of Turkey shares the sovereignty of the empire with the religious power of the State ; and the *Sheik ul Islam* can dethrone him at any moment. The sovereignty of the Emperor of China is hedged in, confined, and limited by the national etiquette, which is insuperable. Neither the United States nor the Commonwealth of Massachusetts possess *absolute* sovereignty : no body-politic either does, ever did, or ever can possess absolute sovereignty.

When, where, and how did the sovereignty of the State of Massachusetts originate ? What was the process of its growth ? Sovereignty is a fact, and not a moral maxim : in investigations respecting it, therefore, we must follow simple historical methods, and be careful not to lose ourselves in ethical speculations. We are informed by the records of the time, that, when the American Revolution broke out, the leaders of the movement at once shut up the court-houses, because the then acting judges administered justice in the name of the King of England. The administration of justice between man and man came therefore, of necessity, in Massachusetts, to be administered, in the early stages of the Revolution, by self-constituted authorities. Insurrectionary committees organized themselves spontaneously to meet the want occasioned by the sudden collapsing of the legal government of the province. Self-constituted authorities took control of the towns and counties, raised

troops and money, and entered into correspondence with each other. In what other course could the Revolution have possibly run? The question was one of violent transformation, not one of peaceful evolution. The Revolutionary Government suppressed the Royal Government, as such, and, in the nature of things, could derive no authority from it: neither did the Revolution derive original authority from a vote of the people, since the people were not regularly consulted respecting it until after it had become a fixed fact. Besides, the machinery for taking the vote of the people was not, at the time, in working order. *The sovereignty of the Commonwealth of Massachusetts had its birth in the just and necessary usurpations of the vigilance committees that initiated the American Revolution*: it derived its origin, not from the colonial power, nor from the charters of the English king, but from the inherent and spontaneous force of the armed insurrection. It was born and nursed in revolution. It was founded in might; and it vindicated its existence by the persuasive eloquence of the naked sword. These facts are signified by the motto of the Commonwealth, — *Ense petit placidam sub libertate quietem*; and also by the sword which is depicted over the State arms. The loyalists of the Revolution — many of them peaceable and law-loving inhabitants of the province — had the right to be tarred and feathered; the right to have their property confiscated, and to be themselves banished from the country: but they had few other rights which the patriotic portion of the community felt called upon to respect. No one thought of asking for their votes. We distort the fair proportions of history when we dress up our grandfathers in the costume of Arcadian shepherds, and forget the violence, new rum, and exciting eloquence, by which the unanimity of Massachusetts opinion was brought about. A sergeant who for a long time commanded the guard at Washington's headquarters, and afterwards grew very old in meditating on the history of his country, told the writer of these pages that the independence of America would never have been achieved had there been no rum. Our informant did not wish to intimate that Washington drank rum: on the contrary, he affirmed that the Father of his Country had no noticeable vice, except the one of swear-

ing like a trooper when suddenly irritated. The fact that our liberties were baptized in rum seems to be well attested; and yet it is seldom or never alluded to by our Fourth-of-July orators. American institutions, and the (so-called) modern reforms, flow from opposite and conflicting principles; and for this reason it is that these reforms are so often brought up, all standing, by the constitutions and laws of the country.

When the sovereignty of Massachusetts came to be sanctioned in a written Constitution, the instrument was submitted for approval, not to the natural people, but to the legal people, of the State; for the Constitution of the Commonwealth was adopted by the active and energetic "males" of twenty-one years of age and upwards, the vote of the women and children not being taken. The loyal element was also first eliminated from the population through the effects of war, banishments, confiscations, and terror; and the voting males saw to it that the word "male" was put in the Constitution as a restriction upon future voting. Are not the women of Massachusetts people? Are they not, indeed, a pre-eminently interesting class among the people? Who are the people of the State? From what source does a bare majority of the males acquire a right to bind the minority of the males, and the whole mass of the women? Have majorities, like kings, a divine right to govern wrong? There is no ground for the affirmation that the sovereignty of Massachusetts finds its origin in the express consent of the people: it has its origin in FORCE. With what face can we tell a well-informed and thinking woman that the sovereignty of the State finds its origin and sanction in a formal contract to which she is an actually assenting party? How can we tell her that she consciously and freely deeded away a part of her individual sovereignty in favor of the State; and that, in obeying the State, she really obeys herself only? She knows better. She obeys the laws, as we all do, not because she has consented to obey them, but because they are reasonable and just, and because the Massachusetts magistrate beareth not the sword in vain. It may, nevertheless, be safely affirmed, that there is not a voting or non-voting citizen now living in the State, either male or female, who desires to have the Constitution abrogated, or

who even desires to have it amended by any processes other than such as are strictly peaceable, regular, and not inconsistent with the provisions of the instrument itself. In a constructive but very practical sense, therefore, the Constitution of Massachusetts is now "a solemn compact,* by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good;" each citizen, male or female, feeling that the guaranties contained in the Bill of Rights are guaranties of individual sovereignty, and limitations of State sovereignty; and that the government of the State really and truly exists for the protection of honest persons against the machinations and evil deeds of knaves and scoundrels. Unfortunately, it is impossible to say as much, with truth, for the Constitution of the United States; since more than one-third part of the people of the country, North and South, for one reason or another, reject it as unjust and oppressive. The reason of the difference is this: The Constitution of Massachusetts is complete and simple, easily understood, and the people of the State have grown up to it; while the Constitution of the United States is complex, dependent on the course of events for its ultimate completion, impossible to be understood without an amount of study which few persons are willing to bestow upon it, and still far in advance of the federal people who govern under it.

The written Constitution of the United States begins with the singular statement, "We, the people of the United States, in order to form a more perfect union, &c., do ordain and establish this Constitution for the United States of America." This declaration is directly contradicted by historical facts. The Constitution of the United States has never yet been ratified either by the natural or by the legal people of the whole country, voting as members of a single body-politic, or by the natural or legal peoples of the several States. It was ratified by *conventions* in the several States, each State adopting the Constitution separately; so that the instrument comes,

* The Constitution of Massachusetts describes itself as "an *original, explicit*, and solemn compact," which the people, "deliberately and peaceably, without force, fraud, or surprise," made, not with any government or state, but "with each other."

in fact, to be in the nature of a compact, or covenant, between sovereign States. The legal peoples of the several States (not the natural peoples) elected delegates to the conventions ; and the conventions (not the legal peoples) ratified the Constitution. To submit an instrument to the people for approval, and to submit it to the representatives or delegates of the people, are two very different things ; and it is generally conceded, that, if the Federal Constitution had been directly submitted for ratification to the legal peoples of the States, the chances were that the whole project would have fallen through for the time.

The submission of the Constitution to the federal people for approval was impracticable in the nature of things ; because, before the adoption of the Federal Constitution, the federal people, as such, had no actual being

The ratification of the instrument was brought about with great difficulty, in the face of virulent opposition ; and was finally determined by intrigues and compromises in the conventions. Moreover, the Constitution, when finally ratified, was ratified with proposed amendments, in the nature of a Bill of Rights, guaranteeing the reserved sovereignty of the States and of citizens ; and among these amendments was the one proposed by Massachusetts, and now a part of the Constitution, which reads thus : "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The clause of the Constitution which prescribes the manner of its own ratification reads as follows : "The ratifications of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same ;" and this clause is the closing article of the original Constitution. Thus the instrument, speaking as it were from the mouth of the cannon, commences by saying, "*We, the people of the United States*, in order to form a more perfect union, &c., *do ordain and establish* this Constitution *for the United States of America* ;" and ends meekly, and on a more subdued key, by submitting the project to the ratification of the several States, and by declaring that the Constitution

shall be established, not *over* all the United States of America, but *between* such of the States as may see fit, in the exercise of their acknowledged sovereignty, to ratify the same. The Constitution, having been ratified by eleven of the thirteen original States, began to be put in operation in September, 1788. The first Congress under the Constitution met in March, 1789. President Washington was sworn into office on the 30th of April, 1789. North Carolina came into the Union in November, 1789; and Rhode Island not until May, 1790.

The Federal Constitution is, therefore, a subsisting compact between sovereign States. It is a legal instrument, and, as such, is to be distinguished from the Federal Government that was organized, and put in operation, under its provisions; for the Federal Government is no mere compact, — no mere legal instrument, — but a government proper, having direct relations with the individuals who compose the peoples of the several States. No sovereignty was granted by the several States to the United States and to the Federal Government; for sovereignty, which is self-derived by its nature, cannot be conveyed by grant. The States granted to the United States certain powers which carry with them the elements of *might*; and the United States, in the strength of these powers, *assumed* sovereignty; and the States conferred these powers upon the United States for the express purpose and in the full expectation that sovereignty would be *assumed* by the Federal Government. It is precisely because sovereignty cannot be granted, that the Constitution, which is mainly a grant of powers, makes no mention of sovereignty. *Sovereignty is* (under God, who is the sole fountain of might and dominion) *original, self-derived authority to decree, to judge, and to do.* Sovereignty, if not a self-asserting, self-sufficing, self-vindicating fact, is nothing.

In the United States, the legal people (as is, indeed, the case everywhere else) constitute the actual body-politic, or State, and hold the sovereignty. In America, as in France, the whole mass of the adult male citizens, with certain specified exceptions, are voters, and thus repositories of the sovereign power. In England, about one-seventh part only of the adult males

are voters ; that is to say, legal people. In some countries, the whole mass of the titled nobility have a share in the sovereign power, and constitute the legal people. In other countries, the king and the peers of the realm constitute the legal people, the rest of the population having no voice in State affairs. In still other countries, the ruling despot constitutes, by himself alone, the governing power ; and, when he puts on his crown, the whole legal people is covered. Sovereignty is prevailing force, and subsists by divine (perhaps diabolical) right : it is violent, heroic, extra-human, inexplicable. *Sovereignty is self-derived authority.*

The sovereignty of the United States being in the hands of the federal legal people, and sovereignty consisting in original, efficacious ability to decree, to judge, and to execute, what guaranty had the legal peoples of the several States, beholding the rise and culmination of the federal sovereignty, that their own separate sovereignties would not be by it ultimately swallowed up ? A very simple one, but one that ought to be effectual ; which has been effectual hitherto, and which probably will be effectual for many generations. " The Constitution requires, on the one hand, that " the senators and representatives, whether of the Federal or of the State legislatures, and all executive and judicial officers both of the United States and of the several States, *shall be bound by oath or affirmation* to support the Constitution of the United States ; " and, on the other hand, we find in the instrument to be thus supported the following express provision : " The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It is not reasonable to suppose that the officials administering the three co-ordinate departments of the Federal Government will ever concur in simultaneously perjuring themselves. Men are no worse now than they always were : some of them are downright knaves ; more of them are men of thorough and tried honesty ; and the great majority are neither knaves nor honest men, but persons who respect integrity, and intend to do right whenever their private and family interests, ambitions, and necessities permit. In general, we may safely

place confidence in the verdict of an ordinary man whose judgment is not warped by interest or ambition; and in four cases out of five, where men are called upon to act, in common as well as political life, their judgments are determined by considerations of the general welfare, because no others happen to be present to their minds. Other things being equal, all men are interested, and know themselves to be interested, in the supremacy of order and of right.

If the two houses of Congress, who have naturally the initiative of evil, allow themselves to be carried away by passion and excitement, so that they pass unwholesome laws, the President is impelled by natural pride of office, and a regard for his own historical record, to interpose his veto for the protection of the people.* If the President catches the madness of the House and Senate, and makes common cause with them, or if Congress goes over his veto by a two-thirds vote, the Supreme Court stands in the way to correct the evil, if there be any; and it is not to be expected that the three departments of the federal sovereignty—the department which decrees, the department which judges, and the department which executes—will all go crazy at the same moment of time. Moreover, if the conduct of the Federal Government should become utterly reprehensible, the people may still fall back upon their State governments (which have the power, and generally the will, to stay acts of federal usurpation, and moderate their effects), and the root of the evil may be removed by a dismissal, in a regular and constitutional way, of the trespassing federal officers.

In theory, the government of a free people is not one which shall in all circumstances govern, but one that shall effectually govern while it is maintaining right against wrong, and shall begin to fall in pieces as soon as it begins to maintain wrong against right. No country is truly free whose

* The Constitution of the United States requires that, "before he enter on the execution of his office, the President shall take the following oath or affirmation: I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; *and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.*" Thus the President is especially set apart, in contradistinction from all other officers, as the sworn custodian and conservator of the Constitution of the United States.

constitution does not furnish the citizen with protection against the wrong-doing of other citizens, and also guarantee him against the wrong-doing of the government itself. No oppressor is so intolerable as an oppressive government; for the private oppressor acts with his own force only, while the governmental oppressor acts with the irresistible force of the whole people.

In the individual man, the three elements of sovereignty (the practical and the higher reason, the will, and the conscience) are united in a single person; and it is for this reason that few individual men are competent to meet severe and trying temptations. But the Federal Government is especially organized to meet and to outride great crises, the three elements of its sovereignty being lodged in separate and independent bodies, and administered by different persons. Thus the Federal Government is rendered weak to do wrong, and powerful to do right: for, as soon as it begins to go wrong, it naturally begins to be divided against itself, and the three great wheels of its machinery exhaust their momentum, or wear each other out, in their friction against each other; while, as soon as it begins to go right, all the parts work harmoniously, and exhaust their full strength on the object of their action. No country is securely free if its governmental machine is not so organized that it shall be struck with paralysis whenever it becomes guilty of usurpation upon the reserved sovereignty of the people; for it is clearly demonstrated by the history of the world, that the mere right of insurrection is no adequate guaranty to subjects oppressed by Machiavelian rulers.

The Federal Government of the United States^{*} is triple-headed, and not single-headed.* The government of England is single-headed. The average American man, if he have made no special study of American institutions, is naturally, by the

* The Constitution of Massachusetts states, with great energy, the American theory of the necessity of a threefold distribution of governmental powers. It says, "In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: TO THE END IT MAY BE A GOVERNMENT OF LAWS, AND NOT OF MEN."

force of historical circumstances, on the level of English civilization: and the ideas which lie at the foundation of English institutions spontaneously present themselves to his mind as true, and as in accordance with what he calls common sense; that is to say, with his unreasoned, instinctive intuitions. Moreover, since the average man usually considers all that he does not know as not worth knowing, every thing which is complex and not simple, every thing that cannot be understood without an expenditure of patient study, is at once rejected by him as false, or at least unpractical.

England is a royal emporocracy (or government of shopkeepers), of which the queen is sovereign in name, but not in fact, and of which the persons who manage the parliament are the real masters. The aristocracy of England is no longer a true aristocracy as it once was, since it no longer represents a military caste, but owes its position to mere political privilege and wealth; and it may be remarked, that it was never an intellectual caste. In England, the correlative of aristocracy is not reverence and devotion as it is in countries where real aristocracy exists, but is sheer flunkeyism. An English lord is no more a real noble than the English queen is a real queen. The royal family of England is what it is by act of parliament; and the aristocracy has become what it is, not by prowess in arms, but by fraudulent encroachments on the liberties of the people. It is not the fashion, at the present day, for English aristocrats to boast of their virtuous poverty, and to base their claims upon the sole historic merits of their families, their own innate nobility of character, and the Spartan simplicity of their lives. The revolutions which have taken place in England have had the effect to sweep aside the sword, the throne, and the altar, and to leave nothing standing as a public institution except the fire-proof safe. The altar, it is true, continues to exist, but it exists only as an agent of the strong box; and the same may be said of the throne and the sword. If we, in this country, subordinate the executive and judicial departments of our government to the legislative branch, rendering the government single-headed, and placing the sovereignty in Congress alone, we shall at once come under the absolute rule of party leaders, be ground by party machine-

ry, and find ourselves, in a very few years, saddled with a worthless aristocracy like that of England, and differing only from that of England by the lack of time-honored titles. What England has accomplished in the way of progress out of despotism, we may easily accomplish, in the way of retrogression towards despotism, by a single act of supreme folly. But we cannot hope, if we are willing to be thus false to our mission, to enjoy the quiet and stability, small as it is, which has fallen to the lot of England. Our country is too wide, and the agricultural interests too predominant, to admit of our being governed, for any length of time, by Carthaginian and Venetian institutions. No police force would suffice to keep the parts of the country situated at the circumference in subordination to a congressional committee sitting at the centre. Local self-government would assert itself everywhere as force; and there is no central force, furnished in the nature of the case, competent to put local self-government down. Credit, or *prestige*, which is the spring and regulator of emporocratic government, would cease to exist; for no one would have faith in the permanence of the new institutions. The public debt, which Congress would endeavor to wield as a sword for its own purposes, would become worthless. Americans can never forget that they have rights, and will not fail in the long-run to attempt their vindication; and this is a difficulty not experienced in England, since Englishmen fight, never for their rights, but always for their privileges.

Intelligent and generally well-read persons are to be met with every day, who know nothing except from vague instinct, either of the written Constitution of the United States or of the unwritten Constitution of England, and who suppose that these two constitutions are, at bottom, very much the same thing. Assuming that the Federal Government is single-headed, that the sovereignty inheres exclusively in Congress, that Congress is an American duplicate of the British Parliament, and that the voice of Congress is the authentic voice of the American people, they inquire why Congress does not, in difficult cases, inaugurate new interpretations of the Constitution, and change it by novel precedents; or why they do not change it by actual legislation. They are not aware

that all precedents against the written Constitution of the United States are null ; that all legislation against it is void ; and that it must be changed, if changed at all, by a vote of three-fourths of the States. They are not aware that it is the Constitution, and not Congress, which speaks the authentic voice of the people ; Congress being but one branch of the Government, on the same level with the Executive and the Supreme Court, and representing the people to the same extent — neither more nor less — that the people are represented by the President (who is, like Congress, elected by the people) or by the Judiciary (which is appointed pursuant to provisions of the Constitution). There is no end to the idiotic perversions of the Constitution, perpetrated by intelligent men who know the instrument by hearsay only. One will tell you, that, because the word “slave” does not occur in the instrument, slavery could never have been guaranteed by it ; as though things are any the less true when men are ashamed to confess them in monosyllabic words, and as though they cannot be as well expressed by exact description as by Saxon names. Another objects that the words “persons held to service or labor under the laws of a State” may signify apprentices and criminals as well as slaves. Very true ; but does it therefore follow that these words may not also signify slaves, as well as apprentices and convicts ? Another says slavery is immoral in itself, and therefore cannot be guaranteed by a constitution which is the embodiment of all that is right, and of nothing that is wrong ; to which the obvious answer is, that the Constitution is the work of men, and may possibly contain much that is wrong. But, to save space, let us state the sequel of these objections in the form of questions and answers. *Qu.* If any thing clearly wrong is sanctioned by the Constitution, are we not bound, by the higher law, to disregard the Constitution in that respect ? *Ans.* Yes ; but if you find the Constitution to be “a compact with death, and an agreement with hell,” you must be very careful not to take an oath to support it. *Qu.* How, then, can honest men hold office under it, if they are not to swear to support it, since the taking of the oath is obligatory upon all Federal and State officers ? Moreover, if honest men, through scruples of con-

science, leave offices vacant, how do they know that unscrupulous persons will not obtain those offices and use power and influence for sinister purposes? Again: if all upright men scruple at taking the oath, what shall prevent the whole power of the government from falling into the hands of scoundrels?

Ans. Before, you talked morality: now you are talking iniquity. If you, from conscientious scruples, refuse honor and promotion, you will derive from that very act an influence for good which you never could derive from official position. Besides, the path of perjury is never the path of duty. “You cannot serve God and Mammon.”

Qu. Do you think it would be just and fair to the State of Massachusetts to have the State of Georgia come back into the Union, counting her non-voting blacks as a part of her represented population? and would not this very contingency occur if conscientious people should refrain from taking part in governmental action?

Ans. Certainly, it would be fair to Massachusetts, all of whose population is represented; and it would be unfair — if unfair at all — only to the non-voting blacks, who are, by the supposition, to be represented by delegates not of their own choice.

Qu. Do you, then, confess that the negroes ought to possess the elective franchise?

Ans. Certainly: under due regulations adapted to the condition of a race just emerging from barbarism, such of the negroes ought to be allowed to vote as show themselves competent to be intrusted with the welfare of the non-voting natural people.

Qu. You approve, then, of legislation by Congress, giving the negroes a right to vote?

Ans. No: because every Congressman who votes for any thing of the kind perjures himself, if he understands the Constitution in accordance with the usual interpretation; for the Constitution, which every Congressman is bound by oath to support, gives Congress no authority to interfere with the elective franchise in the States.

Qu. You admit, then, that every man is to obey the oath as he understands it?

Ans. Without doubt.

Qu. Suppose the Congressman says he understands the Constitution to give Congress power to regulate the elective franchise in the States?

Ans. As human nature is now constituted, all judgments that are conceivable are possible; but the presumption would be, either that the man has not read the

Constitution, or that he has forgotten it, or that he lies. If a man says he understands black to be white, it by no means necessarily follows that he does, in reality, so understand it.

Qu. Suppose he puts his interpretation on the ground of the duty of the Federal Government to guarantee to the several States of the Union governments republican in form? *Ans.* A government republican in form is not necessarily a government extravagantly democratic in substance. Ninety-nine out of a hundred of all the republics in the world have been based on slavery; and very few of them, if any, have ever adopted universal suffrage. Universal suffrage has never yet existed, even in Massachusetts. Universal suffrage, female suffrage excepted, is not the historical definition of the word "republicanism."

Qu. Suppose he puts it on the ground of the power of the United States to make foreign conquests? *Ans.* There is no clause in the Constitution authorizing the Federal Government, by making foreign conquests within the limits of its own territory, to acquire power to determine the qualifications of voters in the States. Such power, if acquired at all, must either be acquired by usurpation, or be conferred by the free consent, "without force, fraud, or surprise," of three-fourths of the States.

Qu. Are you not very unreasonable and unpractical? Is it wise to totally ignore the existing condition of the country, and the party necessities of the present crisis? You will, at least, admit that a President who disappoints the expectations of the party which elected him is guilty of treason, and liable to be deposed from office?

Ans. It would be a good plan for men, liable to be called on to take an oath to support the Constitution, to prepare themselves by fasting and prayer for the study of the instrument.

Qu. Do you regard a sneer as an argument? Have you no respect for the great masses of the loyal people? and are you willing to strengthen the hands of Copperheads?

Ans. We do not intend either to sneer or to scoff; and we reply with all the patience we have at command. We suppose a loyal person to be, as the word implies, a law-abiding person; and we certainly respect all law-abiding persons. As for the term "Copperhead," in its application to human beings, it is a word unknown to the Constitution and laws; and we are ignorant of its precise meaning.

If to oppose official perjury is to strengthen the hands of Copperheads, we have the honor to plead guilty to the charge.

The government of the United States has no legal or constitutional right to demand "loyalty" of the citizen, understanding the word "loyalty" in the sense it has recently acquired in this country. If it be "disloyal" to advocate the traditional States-rights theory of our government, then both Jefferson and Madison were traitors. Every citizen has a right to talk against either the existing or any other administration, against the existing or any other congress; and also a right to use every lawful means at his command, either to bring the administration into discredit, or to render the policy of Congress unpopular and odious. Every man, if he rest within legal limits, has a right to thwart the government if he can. Were not Moses and Aaron disloyal in Egypt? Was not Washington a red-handed rebel?

The word "nationality," like the word "sovereignty," shines in the Federal Constitution, from the fact of its not being found there at all. It is in the destiny of the United States to some day become a nation; but they are not, so far as their internal relations are concerned, a nation as yet. Our nationality has not ceased to be purely artificial. It has not yet, by any means, taken upon itself the form of a growth of nature, but subsists solely as a product of the deliberate and conscious will of the legal peoples of the several States. As the work of man, it is liable at any moment to disclose heretofore unseen and absurd defects. The work of the federal people has hardly begun; and we shall have, in the future, many occasions for the assembling of constitutional conventions of all the States for the purpose of conforming the requirements of the Constitution to the conditions of nature.

The United States acquire none of their powers, as against any of the States, or as against any of their citizens, under the laws of nations, or in virtue of any federal nationality, but acquire all the powers they possess, without exception, from the Constitution only. It is a matter of wonder that candid and intelligent men should see their way clear to talk, as many of them do, in view of the tenth amendment of the Constitution, about "the incidental rights" which the United States

possess because they are "a nation." They are deceived, it is to be presumed, by an analogy which does not hold good in the applications they make of it. Nations are of natural growth, and possess natural rights as nations; which rights are instinctively recognized by men, and are enumerated and recited in the books on the law of nations. The State of Massachusetts, for example, is a nation, exercising natural rights as such; and those rights are recognized *and restricted* in her Constitution. The written Constitution of Massachusetts would be very imperfect if it did not contain a Declaration of Rights, reciting the natural and inalienable liberties of the citizen as anterior and superior to the natural right of the State. But the United States, so far as they are a nation at all, are, as yet, an artificial, and not a natural nation, having rights which are not natural, but artificial, acquired to them by special grants, and not inherent in them by the necessity of their nature. There is no present absolute necessity for a Declaration of Rights, reciting the reserved rights of the States, and of the citizens of the States, as a component part of the Federal Constitution; although a necessity for such a Declaration of Rights will one of these days arise: for the United States have, as yet, no natural rights against the exaggeration of which States and citizens should be on their guard. All these questions seem to be questions of mere history, and by no means of difficult solution. The origin of the Federal Government is not yet lost in the night of time.

When the federal people of the United States shall have attained its majority, when every man and woman throughout the wide extent of the whole country shall have accepted the Federal Constitution in his or her heart with the unanimity shown by the people of Massachusetts in accepting their special Constitution, the federal people will exist for itself; the Federal Constitution will become a contract binding on all citizens, whether they have or have not taken the oath to support it; and the United States will become a nation. When that time arrives, it will be true practically, as it is now true in theory only, that the federal people of the United States ordain and establish the Federal Constitution for the United States of America.

In theory, but not yet practically, the sovereign independent States of Anglo-Saxon North America transfer, by a constitutional compact, their separate and distinct rights, prerogatives, and powers from themselves, as separate States, *to themselves* (and not to the Federal Government), as the United States. To prepare the way for the real advent of the federal people, each State actually and effectually surrendered, in adopting the Constitution-amending power, all its prerogatives and powers into the hands of the United States (not the Federal Government), with the sole exception of its right to equal representation in the Senate; three-fourths of the States being authorized, the will of the minority of the States notwithstanding, to change the Constitution of the United States in every particular, the equal representation of the States in the Senate alone excepted. The power of three-fourths of the States hath this full extent. If three-fourths of the States should see fit to re-establish slavery in all the States, Massachusetts would be bound by her covenant-obligation to acquiesce in the change. Of course there would be fighting — and there ought to be fighting — if any outrage of this kind should be attempted; and any State which should bestow a good cannonading on the United States, as a justifiable admonition that they were going outrageously wrong, would, in such case, confer a general benefit upon the whole people. Again: if three-fourths of the States see fit to strike out the clause of the Constitution guaranteeing republican forms of governments, and prefer to establish imperial governments in all the States and at Washington, they have the constitutional power and right to carry their will into effect. But this power is given to three-fourths of the States acting in their Constitution-amending capacity, and not at all to the Federal Government, much less (if less be possible) to Congress, a single branch of that government. Slavery can neither be established in the States by act of Congress, nor be abolished in them by proclamation of the President. The States have reserved the Constitution-amending power to themselves, confiding it neither to the President nor to Congress. As a woman, by the contract of marriage, takes a particular man for better or worse, — perhaps for worse without the better, — so each State, by the

constitutional compact, takes the other States for better or worse ; and three-fourths of those States have always the power of making the contract for worse at their pleasure. And as women, notwithstanding the marriage contract, sometimes fight their husbands, so it is possible that individual States may sometimes fight the United States, in spite of their covenant obligation.

There is no provision made in the Federal Constitution either for the secession of disaffected States or for the dissolution of the Union. No State can, therefore, lawfully be liberated from its contract except by an amendment of the Constitution, approved by three-fourths of all the States ; and any State which undertakes of its own motion, without justifiable cause and without previous agreement with the other States, to go out of the Union, renders itself liable to be restrained by force from consummating its act of secession. Not that the State itself, as such, can be directly coerced ; for the Constitution, as it stands, gives no authority to the Federal Government to coerce a State : but the Federal Government rightfully claims the allegiance of all the citizens of all the States ; and no citizen can take part in any movement having in view the secession of a State, without, by that act, becoming guilty of rebellion against the United States. The Federal Government may, therefore, by trying rebellious citizens, and punishing them on conviction, effectually check rebellion in a State without interfering with the sovereignty of the State itself. The powers granted to the Federal Government by the Constitution, to make laws for carrying into execution all powers vested in the Government of the United States, and also to raise armies, and to provide for calling forth the militia to execute the laws of the Union and suppress insurrection, are very broad, and sufficient for any emergency.

When, on the other hand, either as the result of actual invasion, of civil war, or of any other conceivable cause whatsoever, the constitutional government of a State becomes dormant, the State itself is not therefore annihilated, but still subsists as a State in the Union. It is the people who are the State ; and the State subsists so long as its people are not, all

of them, either killed or expatriated.* When the government of a State becomes dormant, its powers revert, not to Congress, but to the people of the State. The Constitution of the United States nowhere authorizes the Federal Government to inherit, under any circumstances, the sovereignty of a State. Our Revolutionary fathers never allowed that the sovereignty of a British province could pass, because of the utter subversion of its government, anywhere else than to the people of the province: they never allowed that it could revert to the British Parliament. The Declaration of Independence says, "The King of Great Britain . . . has repeatedly dissolved representative houses; . . . he has refused for a long time, after such dissolution, to cause others to be elected: whereby *the legislative powers, incapable of annihilation*, HAVE RETURNED TO THE PEOPLE AT LARGE FOR THEIR EXERCISE; *the State remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.*" Any other principle would have vitiated our whole Revolutionary record. It will be observed that the States which adopted the Federal Constitution were not the State governments, and that the instrument was not sanctioned by the State legislatures, but that the people ratified the Constitution themselves (constructively) by their delegates in convention. Who are the constitutional people of a State whose government is dormant? Obviously, the people who were constitutionally the people of the State at the moment its government became dormant, and the persons who have, under the constitution of the State, been since virtually added to the people. The Federal Government may thin out the people of a rebel State by hanging those among them who can be proved guilty of treason against the United States; but it has no constitutional authority, as the Constitution now stands, to meddle in any way with the qualifications of voters in any of the States, rebel or other. If the United States, by terms of capitulation agreed to on the field of battle, or by

* This may be illustrated by the case of Massachusetts. It is the people of Massachusetts who are the State of Massachusetts, the organized government being neither the people nor the State. "THE PEOPLE inhabiting the territory formerly called the Province of Massachusetts Bay formed THEMSELVES," not the three departments of their government, "into a free, sovereign, and independent body-politic, by the name of the Commonwealth of Massachusetts."

proclamation of amnesty, and acts of pardon, or by injudicious legislation, tie their own hands, so that they cannot punish rebels, they act within the unquestionable limits of their own sovereignty; but they cannot, by merely abandoning their authority to punish rebels lawfully, acquire a right either to punish rebels unlawfully, or to coerce States. Those rights, if acquired at all, must be acquired by another process. The fact, that neither the legislatures nor governors of the rebel States applied to the Federal Government for protection of the Southern people against domestic violence, did not relieve the United States from their obligation to guarantee to the law-abiding people of those States the benefits of the governments, republican in form, which existed in those States when the Rebellion broke out. It was the duty of the United States to restore those governments, in their authentic form, at the first practicable moment. The United States acquire no rights from their failure to do their own duty. Allegiance implies, as its correlative, that the subject should be protected from violence; and governments which cannot protect their subjects from violence have no right to demand allegiance. Men who were conscripted into the rebel armies have a right to claim damages from the United States. The United States fought out the war against the rebels, not merely to vindicate their own authority, but also to fulfil their constitutional duty of guaranteeing to all their subjects the benefits of the Federal Constitution and laws. They fought to secure to the Southern States the free enjoyment of their own constitutions and of the Federal Constitution, and not for the purpose of making foreign conquests within the limits of their own territories.

In the United States, as a general rule, whatever institution or principle prematurely undertakes to make itself national, damages itself by its own act; and whatever institution or principle wrongfully undertakes to make itself national, destroys itself. There have been, from the beginning, many contending parties in the country, and, among them, two which demand special notice in this place; the one striving to nationalize the institution of slavery, and the other striving "to make freedom national." Slavery is guaranteed in the Constitution; but it is guaranteed vaguely, although effectually,

by implication, as a local, and not as a national, institution. If the advocates of slavery could have obtained the requisite number of votes, they would, without doubt, have made slavery national by an amendment of the Federal Constitution; but finding themselves to be, by no means, an overwhelming majority of the whole country, they endeavored to accomplish their purpose by insidiously promulgating and defending an interpretation of the Constitution which would have the effect to transform the instrument into conformity with their wishes. Republishing in the Southern papers every arrogant and insulting thing that was said or printed at the North in derogation of slavery, they appealed to the Southern sense of pride and self-respect, "fired the Southern heart," and created a compact local majority in the Southern States in favor of rendering the existence of slavery dominant and eternal. Holding the balance of power between the historical parties of the country, this local and well-disciplined majority, for a long time, allowed no President to be chosen by the people who was not either a Southern man, or else what they called "a Northern man with Southern principles." They obtained also the control of Congress, and caused the passage of unconstitutional laws for the protection of the slave-system; such, for example, as the Fugitive-slave Law. (We call the Fugitive-slave Law unconstitutional, because the clause providing for the delivering up of escaped persons held to service or labor, under the laws of a State, is in the nature of a compact between the States, and dependent on the sole honor of the States for its fulfilment, and because the Constitution gives the Federal Government no authority whatever to guarantee the execution of the clause.) * The slave-power finally obtained decisions from the Supreme Court of the United States, which, if allowed to have their natural effect, would have rendered slavery a national institution. In gaining the three departments of the

* Although the slave-power was very impartial in the employment of instruments, it used the Whigs even more effectually and freely than it did the Democrats. The Fugitive-slave Law was passed under a Whig administration; and was signed by Millard Fillmore, a Whig President. At the Whig Convention of 1852, Fillmore's policy, the Fugitive-slave Law included, was approved by a vote of 227 against 60; and a member of his cabinet, known to have approved all his measures, was nominated for Vice-President.

Federal Government, the slave-power literally gained nothing, but, on the contrary, sowed the seed of its own destruction. The attempted evil was at once effectually checked by what really amounted to State interposition, and nullification at the North; and so it was again clearly demonstrated by facts that the Constitution of the United States cannot be amended by the conjoint action of the three departments of the Federal Government, but must be amended, if amended at all, by a vote of three-fourths of the States.

“The firing of the Southern heart” led to offensive and domineering conduct on the part of the South; which, in turn, was answered by retaliation on the part of the North. The invasion and occupation of Kansas by Border ruffians led to the invasion of Virginia by John Brown. One event followed another, until the event came which was predestined from the moment when the Southern heart was first “fired,” — the South rose in insurrection. Necessarily, in the nature of things, the North being richer, equally brave, and more populous, than the South, the issue being squarely put, and slavery being essentially indefensible in morals, the first gun fired at Sumter was the death-knell of the whole slave-system. The crime of the South, politically considered, — the one which, in the nature of things, was inevitably punished, — was not that of slaveholding, but that of “federalism,” in the obnoxious sense of the word: it was the criminal attempt to change the Constitution of the United States by perversions of the instrument sanctioned by the departments of the Federal Government and by brute force. The destruction of slavery, although inevitable, was a part of the punishment only; and the insurrection was not the original crime, but a punishable act, naturally consequent upon the crime consummated before the insurrection finally broke out.

On the other hand, the abolitionists were men of quick moral perception, who never understood how one man could own another man. They were, in great majority, individualists and non-resistants. Regarding the constitutional duty of the United States to guarantee each State of the Union against domestic violence as an obligation upon Congress to vote men and money to shoot, stab, and kill insurrectionary

slaves, they refused to take office under the Federal Government, and affirmed the Federal Constitution to be "a covenant with hell, and an agreement with death." Regarding the rendition of fugitive slaves as a duty constitutionally obligatory on the States, they refused to accept any State office that required an oath to support the Constitution of the United States. Most of them regarded the mere act of voting for Federal or State officers as a voluntary complicity with crime. Harmless, peaceful, but very fierce in speech, and eloquent, looked upon by most persons as men of unsound mind, they obtained great influence through the care taken by Southern statesmen to ostentatiously notice, and disseminate with well-feigned indignant reprobation, abolition speeches and pamphlets. Benton warned Calhoun that he was giving importance before the country to enthusiasts, who would have no influence if left to themselves; but Calhoun understood the hand he held, and knew how to play his cards.

The late war suddenly brought the abolition leaders prominently before the people as far-seeing, neglected prophets, as exceedingly powerful and successful agitators, and as guides to public opinion. All this was a mistake: the war would have occurred, and slavery would have gone under, if no American or Massachusetts antislavery society had ever existed. The abolition movement was an incidental effect of the historical public ferment, not a cause of it. The heads of the abolition leaders were, however, completely turned by the expressions of admiration and devotion that were unexpectedly showered upon them. It was something novel in their experience. They were utterly demoralized by their own apparent success; and their first actions demonstrated their unworthiness of the greatness thrust upon them: they forgot that they were peace-men and non-resistants; they forgot that they had been acting all along from conscientious motives, outside the Constitution; and they condescended willingly (whether consciously or unconsciously) to play the part of petted, bepraised tools of political intriguers, who cared little for either slavery or freedom, provided they could lift once again the dishonored banner of "Federalism," and organize the action of the Federal Government in the interest of their own ambition, and to the

confiscation of local liberty. Thus slave-propagandism and abolitionism both ended in "federalism;" the first in a federalism which tended to the subordination of Northern rights and interests to the advantage of the dominant faction at the South, and the second in a federalism which tended to the subordination of Southern rights and interests to the advantage of the dominant faction at the North. The temporary triumph of the first was followed by a temporary triumph of the second; and the effort on both sides has been productive of nothing but disaster.

To show the demoralization of the antislavery leaders, we may remark, that when slavery, by appealing to the sword, had mortally stung itself, so that it was virtually, although not yet actually, destroyed by its own venom, they allowed the federal-abolition influence to force Mr. Lincoln to issue a proclamation liberating slaves, and giving military necessity (a term of blasphemy to the antislavery men in the earlier stages of their movement) as the motive for his act. Now, such a proclamation by the constitutional commander-in-chief, and from such a proclaimed motive, was perfectly valid: but it placed the liberation of the slaves (where it need never have been placed) on the ground of the destruction of private property in view of the public good; and the Constitution says expressly, "Nor shall private property be taken for public use without just compensation." It may be remarked here, that the power of the commander-in-chief extends to the liberation of slaves, but not to the abolition of slavery. Probably few persons, competent to form an opinion, will maintain that a single slave was liberated under Mr. Lincoln's proclamation who would not have been liberated if the proclamation had never been issued; but the ferocious passion for federalistic action was so urgent, that it was deemed expedient to kill the slave-power by an act of federal authority, regardless of consequences, before it could have time to die of itself, and for the purpose of vindicating federal supremacy over the local rights of the States. Thus the United States find themselves saddled with a strictly legal obligation to compensate the former owners of the slaves for their liberated chattels, those owners only excepted who can be convicted of treasonable conduct; for all

men retain the rights of innocent persons until they are convicted of guilt. This claim will certainly be urged; and, if not duly honored, will, at least, serve as a makeweight in some damaging compromise. The United States, like all other moral agents, are bound by their own voluntary acts: they cannot lawfully repudiate any of the obligations which they have freely taken upon themselves. And this is the curse of all "federalism" in the United States, that it exercises itself in reckless expenditures of unconstitutional force, all of which have to be expiated at the expense of poverty and suffering on the part of the people. So long as the Federal Constitution remains the fundamental law of the land, every unconstitutional act will be followed, sooner or later, by its constitutional compensation of suffering to some one. It is cruel, therefore, to attempt the establishment of "federalism" in the United States, without having first repealed, revoked, or destroyed the Federal Constitution.

The failure of the abolition leaders to show an elevation of character adequate to the part they are called on to play in the existing crisis is the great misfortune of the time. If they had kept their record clear; if they now retained their ancient hostility to violence and perjury; if, while manfully bearing their testimony against slavery and oppression, they had preserved their skirts from being stained by the blood of war, and had refrained from countenancing federal usurpation of rights belonging to the States and the people,—they would have been able to stand forward now as mediators for the negro, who, with the ambition, cupidity, and lust of power of the Northern white man pressing him on one side, and the instincts and necessities of the Southern white man pressing him on the other, is ground between the upper and the nether millstone. Unfortunately, the abolition leaders have become, like the rest of our public men, mere party politicians. After all, the negro has his lot cast in with that of the white man of the South, and will have to live side by side with the Southern white man. It was neither wise nor humane to widen, as we have done, the chasm which separates between the negro and the white man of the South; for the chasm will have to be bridged over, and the two races will be under the necessity of living together

upon such terms as they can mutually establish ; and, ultimately, those terms will be settled independently of any dictation exercised by the North. The government of the South by the North is too expensive to last long. It would cost nothing at the present time to exert the influences of brotherly love and of Christian charity, if we possessed public men competent to exert a Christian influence. If we had a class of men at the North such as the abolitionists might have been at this moment if they had not given way to a feminine ferocity, and an unchristian zeal for coercion, terms of reconciliation might be offered through them to the South, and the whole country might be re-united on true Christian grounds, both in spirit and in form, and the welfare of the negro might be guaranteed.

The moral weakness manifested by our antislavery reformers seems to have its origin in their unbalanced individualism, and their belief in the completeness, and possible independence and perfection, of the isolated man. The subjective divinity of the human soul seems to have been overdone by the existing generation. Individualism is good in its place, as qualified and balanced by socialism ; but the experience of the world shows clearly that individualism unbalanced by socialism, and socialism unbalanced by individualism, lead always to disastrous social and political crises. The moral and political questions of the hour are of complex, and not of simple, solution : it is with savages only that moral questions are void of complexity. To the true philosopher, society is a living being, endowed with an intelligence and an activity of its own, governed by special laws which are discoverable by observation, and by observation only, and whose existence is manifested, not under a material aspect, but in the concert and in the close mutual dependence of all the members of the social body. The theological name of the universal social body is *Adam*, or the collective man. The dogma of the community of penalties and sufferings in Adam is as old as theology itself. Everywhere the innocent have been seen to suffer with the guilty, and the guilty to suffer, not the exact penalty of their crimes (except in the case where judgments issue from human tribunals), but the share that falls to them in the

distribution of the sufferings due to the community. We are all mutually dependent, morally, intellectually, and physically, upon each other. What we possess, we owe partly to our own faculties, but mainly to the education and material aid received by us from our parents, friends, neighbors, and other members of society. A child exposed, at birth, on a doorstep in Beacon Street, and a child exposed on a bleak rock in a desolate island, will experience the results of different social conditions. In every country, men begin by taking their religion, their intellectual culture, and their aims in life, from the social media in which they find themselves. Individual men have, to a very limited extent only, the power of determining their own destinies. Divine Providence has an important influence on human affairs.

The United States are a collective man, a living creature, whose body is composed of the mass of the people, whose two-fold intelligence (understanding and reason) is organized in the two houses of Congress, whose will resides in the Executive department, and whose active conscience is organized in the Judiciary. In the Old-World popular organisms, the public conscience (the Judiciary) have taken cognizance of crimes committed by subjects only, and have not been allowed to take cognizance of crimes committed by governments; but in the United States a new experiment is started, and the organic conscience of the country takes cognizance of the constitutional validity of the laws. The government and the laws are themselves on trial whenever any individual citizen is tried. This is the great original feature of our institutions.

The cherubim of Mount Zion, the man-headed, lion-headed, and eagle-headed bulls of Assyria, and the sphinxes of Egypt, were symbols of the collective man, — of social and political unity. The enigma of the Greek sphinx was the problem of the collective man, — the social and political problem which must be solved by the governments of each successive generation, under penalty of being devoured, in case of incapacity, by the ever-progressing revolution.

We are what we are, as individuals and as a people, not solely on account of our own exertions, but also because the world was what it was before we were born. The Present,

says Leibnitz, is the child of the Past, and is big with the Future. Was it through our exertions that the Hebrew commonwealth existed more than four thousand years ago; that the ideas and theories on which that commonwealth was founded exercised a controlling influence on the formation of our institutions; that our fathers (escaping from persecution in England in order that they might themselves persecute their more consistent brethren, the Baptists and Quakers) were thoroughly Semiticized by an intellectual, moral, religious, and political teaching which had come out of the East? Did we create this Western continent? Did we determine the remarkable concurrence of circumstances which determined the motives and conduct of our fathers, which now determine ours, and which rendered the foundation and existence of our institutions possible? Certainly the Lord had a hand in all this! Our fathers, indeed, chose the institutions under which we now live; but they had Hobson's choice only, since no other institutions were, under the circumstances, possible. The will of man is no more efficacious, at this moment, than it has been all along from the beginning. Man proposes, and God disposes. The jubilation of our Fourth-of-July orators over our institutions as the creatures of the mere will of man, and of popular free choice, is like a grand national anthem to the effect, "It is not He who made us, but we ourselves!" Mexican political theories are always accompanied by Mexican conceit and vainglory. The advanced religion of the day is atheism; and its fundamental dogma is this, that God is dead. But the advanced religion of the day will have to take a step backward; for, contrary to its assertion, God is "He who *only* hath immortality." Our fathers are dead, and are buried; in a short time, we also shall be dead and buried: but the same finger of the Almighty which left its trace in the legislation of Mount Sinai, and which left its trace in the Constitution of the United States, will reveal itself as moulding the destinies of our children.

It is not true that our institutions were created by the unaided will of man, and that the will of man may suffice to destroy them: if they are destroyed at all, they will be destroyed at the will of the great Disposer of events, who may

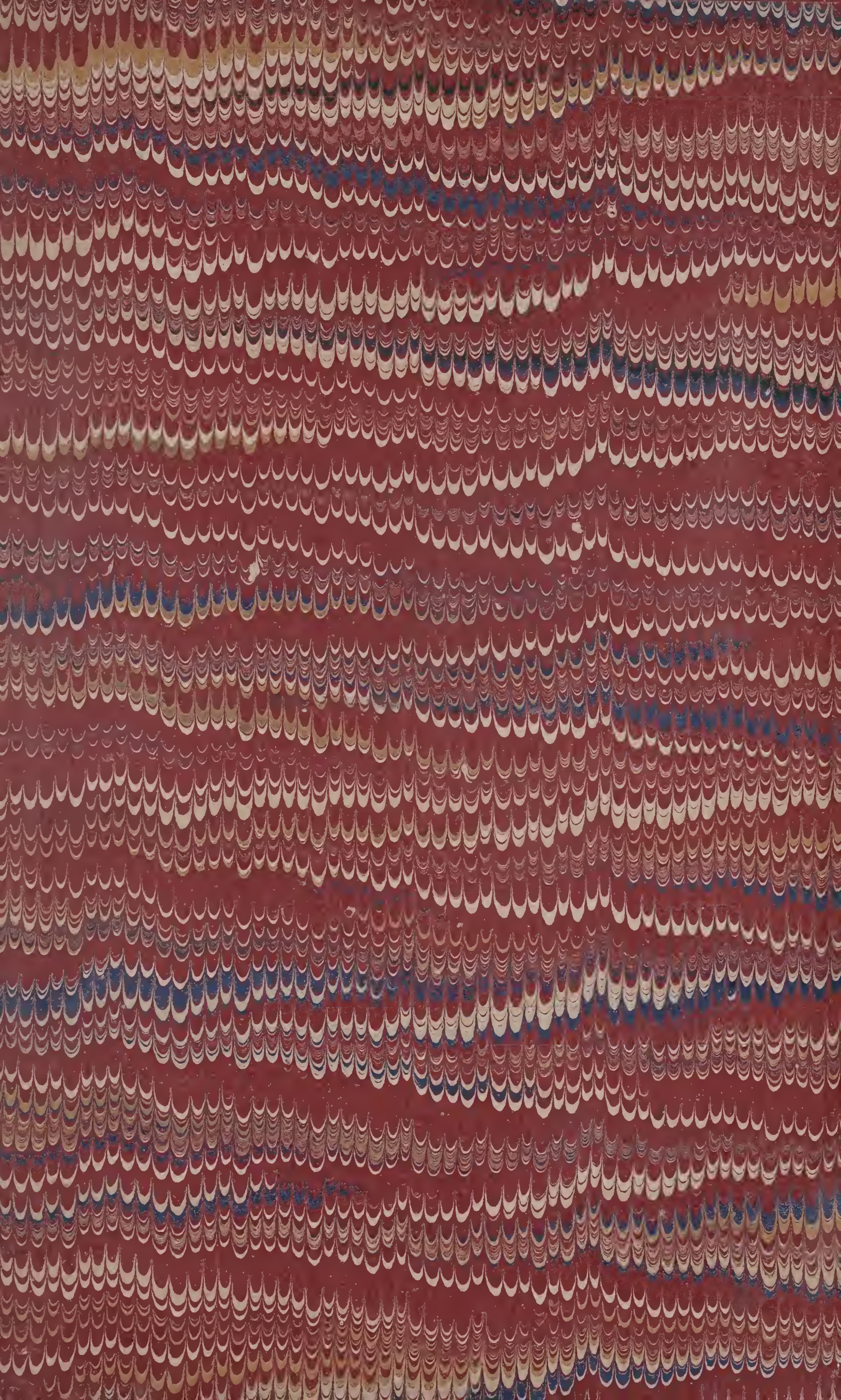
possibly have formed us as vessels of dishonor, fore-ordained to serve as warning examples to peoples more favored by his sovereign good pleasure. How do we know that our experiment was intended, from the beginning, to be successful?

Neither is it true that the elective franchise is a natural right of man; for the elective franchise is a trust, and not a natural right of any citizen. Voting is not mentioned, in the Declarations of Rights, as a natural and inalienable right. The legal peoples of the country are mere juries of experts, whose duty it is to express the will and defend the interests of the whole people, the great majority of whom are never allowed to vote at all. The formation of the legal peoples was anterior to the formation of our constitutions; for the constitutions, when made, were authenticated by the pre-existing legal peoples. The legal peoples came into being mysteriously, providentially, inexplicably, and by the act of the Almighty working through historical causes. If any addition is to be made to their numerical force, the change should take effect in the natural, mysterious way, through the operation of historical causes, and by the vote of the legal peoples themselves. It would be absurd to allow Congress to constitute and determine its own constituency, and thus enable a dominant faction to saddle itself upon an unwilling people forever.

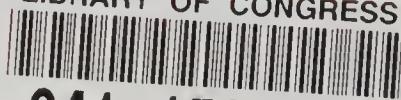
The legal peoples, and not Congress, are the true sovereign. It is the freedom of speech and of the press, the enjoyment of liberty and property, and the pursuit of happiness, which is to be ranked as of natural right, and which is guaranteed as such by the State constitutions. If the legal peoples govern the governments, public opinion governs the legal peoples; and public opinion is formed by women and non-voters, as well as by men and voters. What we require in this country is, not an increase in the number of voters (although it is supposed that no valid objection can be urged against an extension of the suffrage, by the proper authority, to all persons competent to exercise it to the welfare of themselves and of the non-voting natural people), but an increase of honesty at Washington, and, above all, State judges and juries who will decide cases triable by State courts according to the constitutions of their own States, giving parties before them the full benefit

of the State Declarations of Rights. It is a matter of astonishment to persons of a speculative turn of mind to find few (or rather no) reports of cases decided on the ground of the inalienable and indefeasible liberties guaranteed to the people in the Declarations of Rights. The Declarations of Rights stand, to a great extent, as dead letters on the statute-books: they are treated as rhetorical surplusage!





LIBRARY OF CONGRESS



0 041 159 893 7